IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMNAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 885 OF 2005

ALONG WITH

CRIMINAL WRIT PETITION NO. 985 OF 2005

ALONG WITH

CRIMINAL WRIT PETITION NO. 986 OF 2005

ALONG WITH

CRIMINAL WRIT PETITION NO. 988 OF 2005

M/s Carona Ltd. ... Petitioner

V/s

State of Maharashtra & Anr. ... Respondents

Mr. Amit Desai i/b Mr.Sanjay Udeshi & Co. for petitioner
Mrs. Rohini A Wagh for respondent No.2
Shri A.M. Shingarpure, APP for the State.

CRIMINAL WRIT PETITION NO. 989 OF 2005

ALONG WITH

CRIMINAL WRIT PETITION NO. 990 OF 2005

ALONG WITH

CRIMINAL WRIT PETITION NO. 991 OF 2005

ALONG WITH

CRIMINAL WRIT PETITION NO. 992 OF 2005

M/s Carona Ltd. ... Petitioner

V/s

State of Maharashtra & Anr. ... Respondents

Mr. Amit Desai i/b Mr.Sanjay Udeshi & Co. for petitioner

Mrs. Rohini A Wagh for respondent No.2
Shri A.S.Shitole, APP for the State.

CRIMINAL WRIT PETITION NO. 993 OF 2005

ALONG WITH

CRIMINAL WRIT PETITION NO. 994 OF 2005

ALONG WITH

CRIMINAL WRIT PETITION NO. 995 OF 2005

M/s Carona Ltd. ... Petitioner

V/s

State of Maharashtra & Anr. ... Respondents

Mr. Amit Desai i/b Mr.Sanjay Udeshi & Co. for petitioner
Mrs. Rohini A Wagh for respondent No.2
Shri D.P.Adsule, APP for the State.

CRIMINAL WRIT PETITION NO. 1051 OF 2005

ALONG WITH

CRIMINAL WRIT PETITION NO. 1052 OF 2005

M/s Carona Ltd. ... Petitioner

V/s

State of Maharashtra & Anr. ... Respondents

Mr. Amit Desai i/b Mr.Sanjay Udeshi & Co. for petitioner
Mrs. Rohini A Wagh for respondent No.2
Shri A.S.Shitole, APP for the State.

CRIMINAL WRIT PETITION NO.1053 OF 2005

ALONG WITH

CRIMINAL WRIT PETITION NO. 1055 OF 2005

ALONG WITH

CRIMINAL WRIT PETITION NO. 1056 OF 2005

ALONG WITH

CRIMINAL WRIT PETITION NO. 1057 OF 2005

ALONG WITH

CRIMINAL WRIT PETITION NO.1142 OF 2005

M/s Carona Ltd. ... Petitioner

V/s

State of Maharashtra & Anr. ... Respondents

Mr. Amit Desai i/b Mr.Sanjay Udeshi & Co. for petitioner
Mrs. Rohini A Wagh for respondent No.2
Shri B.R. Patil,APP for the State.

CRIMINAL WRIT PETITION NO.1143 OF 2005

ALONG WITH

CRIMINAL WRIT PETITION NO. 1144 OF 2005

ALONG WITH

CRIMINAL WRIT PETITION NO. 1145 OF 2005

ALONG WITH

CRIMINAL WRIT PETITION NO. 1146 OF 2005

ALONG WITH

CRIMINAL WRIT PETITION NO. 1147 OF 2005

M/s Carona Ltd. ... Petitioner

V/s

State of Maharashtra & Anr. ... Respondents

Mr. Amit Desai i/b Mr.Sanjay Udeshi & Co. for petitioner
Mrs. Rohini A Wagh for respondent No.2
Shri S.R.Shinde,APP for the State.

Coram : V.M. Kanade, J.
Dated : 26/04/2005.

P.C. :

1 Since the question involved in the group of these petitions is identical, all these petitions are being disposed of by a common order.

2 The petitioner is challenging the order of issuance of process by the Metropolitan Magistrate, 23rd Court at Esplanade, Mumbai in criminal complaints filed by the respondent No.2 under section 138 of the Negotiable Instruments Act.

3 The learned counsel appearing on behalf of the petitioner has submitted that there is a delay in issuing the statutory notice by the complainant after the intimation of dishonoured cheque from the bank and, therefore the complaints itself are not maintainable and are liable to be quashed. He has given a chart indicating the date of intimation, date of statutory notice issued by the complainant. He has invited my attention to the said chart and pointed out that in each case there was a delay of 2 to
5 days in issuing the statutory notice.

4 The learned counsel appearing on behalf of the respondent No.2 has vehemently opposed the said submission and has stated that the date of intimation which is mentioned in the chart is different from the intimation given by the petitioner's bank It is submitted that the complainant did not issue the notice within 15 days from the receipt of intimation. It is submitted that the date of receipt of intimation, and the date of intimation are the different and the same are not mentioned in each complaint. It is submitted that this fact is to be established in the trial court only after adducing the evidence by both parties.

5 In view of the submission made by the learned counsel for the respondent No.2, it is not possible to accept the contention raised by the learned counsel for the petitioner.

6 The learned counsel for the petitioner has submitted that there was no existing debt or liablility due and payable to the complainant. It is submitted that initially a proposal for Voluntary Retirement Scheme was made by the petitioner to the workmen. The said proposal was accepted and agreement was executed between the petitioner and the workmen on 07/08/1996. It is submitted that

thereafter a clarification was issued on 16/08/1996 in which the petitioner had clarified that if the management does not

pay amount under Voluntary Retirement Scheme by January 31,1997, the letter of resignation submitted to the company by the workmen under the Scheme shall stand revoked and the workmen will be entitled for wages/salary for the period from September 1996 onwards. The learned counsel for the respondent No.2 has also invited my attention to the judgment delivered by the single judge of this court (F.I.Rebello,J.) in which an order to that effect had been passed. She has also invited my attention to various other documents in support of said submission. She has submitted that the petitioner company even otherwise has not paid the wages which was due from September 1996 till today. She has submitted that therefore, the petitioner company is liable to pay the said amount. She has submitted that this question of fact could be decided only by the trial court after the evidence is adduced by both parties. In my view, the submission made by the learned counsel for the respondent No.2 will have to be accepted. The question whether there was existing debt or legal liability is the question of fact which can be decided by the trial court only after the evidence is adduced by both parties and it cannot be decided at this stage by the High Court while exercising its inherent power under section 482 of the Code of Criminal Procedure. The learned counsel appearing on

behalf of the respondent No.2 has also submitted that the petitioner had filed a writ petition challenging the order of issuance of process passed on the complaint filed by one

of the workman under section 138 of the Negotiable Instruments Act. In the said writ petition, the learned single Judge of this court by passing an reasoned order had rejected the writ petition. It is submitted that the company had filed the petitions against other workers on more or less same ground. It is submitted that in view of detailed judgment and order dated 14/6/2002 passed by the learned single Judge (Coram A.B. Palkar,J.) in criminal application No.2111 of 2001, these writ petitions are also liable to be dismissed. I have perused the judgment and order passed by the learned single judge. The said application filed by the applicants was also rejected. In the result, there is no merit in the submission made by the learned counsel for the petition. The learned counsel for the petitioner has not made any submissions on the other grounds which are raised in the petitions. On perusal of the petitions, it can be seen that cheque in question is dated 01/08/1997. The said cheque on the presentation to the bank was dishonoured on 22/01/1998. A reference was made to the BIFR and order was passed by B I F R under section 22 and 22(a) on 18/05/1998, the ratio laid down by the Supreme Court in Kusum Ingots case will not be applicable to the facts of the present cases. In the result, all the criminal writ petitions are rejected. The

questions raised in these petitions are kept open.

(V.M. Kanade, J.)